

**STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

LAW COURT DOCKET NO. PEN-15-618

**FLORANIA DA SILVA MEDEIROS
APPELLANT/DEFENDANT**

VS.

**JAMES-ROBERT G. CURTIS
APPELLEE/PLAINTIFF**

**ON APPEAL FROM THE MAINE DISTRICT COURT
(BANGOR)**

**REPLY BRIEF OF APPELLANT:
FLORANIA DA SILVA MEDEIROS**

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ARGUMENT

I. THE APPELLANT PROPERLY PRESERVED THE ISSUE OF THE CONSTITUTIONALITY OF 19-A M.R.S. § 1653(2)(B).

Pursuant to M.R.A.P Rule 9(c), this Reply Brief is limited to new issues only. This Reply brief will not address those aspects of the Appellee's brief in which the Appellee is simply responding to the Appellant's brief. Ms. Medeiros has already extensively addressed those issues in her Appellant's brief.

The Appellee has argued that Ms. Medeiros failed to preserve the issue of the constitutionality of 19-A M.R.S. § 1653(2)(B). The Appellee's arguments are utterly without merit. Ms. Medeiros did not argue that 19-A M.R.S. § 1653(2)(B) is unconstitutional on its face. Ms. Medeiros contends that the application of 19-A M.R.S. § 1653(2)(B) in this case was unconstitutional as applied. This argument is not new. The Law Court has already held that 19-A M.R.S. § 1653(2)(B) is subject to at least the same level of constitutional scrutiny as applied in actions arising under 19-A M.R.S. § 1803, the Grandparents Visitation Act. See *Davis v. Anderson*, 2008 ME 125, ¶ 14 and 15, 953 A.2d 1166, 1170-1171. Ms. Medeiros was not seeking a declaratory judgment under 14 M.R.S. § 5963 that the statute is facially unconstitutional. M.R.Civ.P. Rule 24 does not apply in this case.

Ms. Medeiros is simply requesting that the Law Court apply longstanding precedent to require a finding of "urgent reasons" or "exceptional circumstances"

to warrant the State's intrusion upon Ms. Medeiros fundamental right to parent. Recently, the Law Court reiterated that the only circumstance in which it has found that "urgent reasons" or "exceptional circumstances" exist to warrant the award of third party visitation rights is "the child's need for continued contact with a grandparent who has been a primary caregiver and custodian for a significant part of the child's life" *Door v. Woodard*, 2016 ME 79, ¶ 17. As noted in Appellant's brief, the District Court found that Ms. Medeiros has always been the primary caregiver of [Daughter]. See Appendix, p. 20. The District Court did not find that the paternal grandparents had ever been a primary caregiver and custodian.

Ms. Medeiros repeatedly raised constitutional objections to the District Court regarding the award of third party visitation rights. At trial, Ms. Medeiros objected to the award of third party visitation rights noting that the rights of parents were paramount. See Trial Trans., pp. 275-276. She also objected to her rights being stripped away to be shared with the grandparents. See Trial Trans., p. 267. In Defendant's Motion for Reconsideration Under Rule 59(e) and Motion for Further Findings of Fact and Conclusions of Law Under Rule 120(c), the constitutional issues were raised and significantly briefed. See Appendix, pp. 83-97. The Appellee's suggestion that Ms. Medeiros did not preserve this issue is disingenuous at best.

**II. THE DISTRICT COURT ERRED IN AWARDING THIRD
PARTY VISITATION RIGHTS UNDER 19-A M.R.S. § 1653(2)(B).**

The Appellee made the novel argument that the District Court did not award the paternal grandparent's third party visitation rights but rather delegated some of the Appellee's contact to the paternal grandparents. On this point, the Appellee is engaged in writing fiction. In the Order on Motion to Enforce and Motion to Modify, the District Court stated, "The court has the authority pursuant to 19-A M.R.S. § 1653(2)(B) to award reasonable rights of contact with a minor child to a third party." See Appendix p. 25. In the Order on Defendant's Motion for Reconsideration and Motion for Further Findings of Fact and Conclusions of Law, the District Court states, "The court shall provide the following further findings of fact and conclusions of law with respect to its decision to award the paternal grandparents limited contact with the minor child". See Appendix, p. 31. The District Court then reiterated its authority under 19-A M.R.S. § 1653(2)(B) to award reasonable rights of contact with a minor child to a third party. See Appendix, pp. 31-33. In its Orders, the District Court was very clear in stating that it was awarding the paternal grandparents right of contact. The District Court did not engage in the tortuous analysis of delegating the father's rights of contact as suggested by the Appellee.

The Appellee's argument that the father supports the award of visitation

rights to his parents is also without merit. The fact that one parent may support the award of third party visitation does not change the analysis on whether the other parent's fundamental constitutional rights are violated. Ms. Medeiros' fundamental liberty interest is still infringed when the District Court awards visitation rights to a third party over her objection. In *Eaton v. Paradis*, 2014 ME 61, 91 A.3d 590, the Law Court found that the fundamental right to parent was implicated even though the father supported the paternal grandmother's complaint.

The Appellee's argument based upon 37-B M.R.S. § 389-A is a red herring. 37-B M.R.S. § 389-A has no application in this case. 37-B M.R.S. § 389-A is only applicable to active members of the military who are on duty. The Appellee is not a member of the military. The Law Court has never reviewed the constitutional issues regarding 37-B M.R.S. § 389-A. The potential justifications involving the exercise of parental rights by active duty military personnel simply do not exist in this case. 37-B M.R.S. § 389-A only involves a temporary delegation of rights. In this case, the District Court permanently awarded rights of contact. In any event, the District Court did not delegate the Appellee's rights of contact. As noted above, the District Court awarded rights of contact to the paternal grandparents.

CERTIFICATE OF SERVICE

I, Christopher Largay, Esq., of Largay Law Offices, P.A., Attorney for Florania Da Silva Medeiros, hereby certify that two conformed copies of the foregoing Reply Brief of Appellant have been mailed through the regular course of the United States Mail, postage prepaid, this 8th day of June, 2016, to the following:

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